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TO: Commissioner for Patents - Mail Stop Appeal Brief - Patents,
Examiner: Keshia L. Gibson - United States Patent and Trademark Office

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Application No.: 10/089,338

Inventor(s): Brian Francis Gray et al.

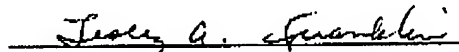
Filed: January 17, 2003

Docket No.: AA431

Confirmation No.: 1452

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1) Appeal Brief in response to Office Action dated from the Examiner to the Board of patent Appeals and interferences, dated March 29, 2006 (9 pages)

Number of Pages Including this Page: 10

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JUN 19 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/089,338
Inventor(s) : Brian Francis Gray et al.
Filed : January 17, 2003
Art Unit : 3761
Examiner : Keshia L. Gibson
Docket No. : AA431
Confirmation No. : 1452
Customer No. : 27752
Title : ABSORBENT ARTICLE HAVING BARRIER SHEET
AGAINST THE MIGRATION OF THE SKIN CARE
COMPOSITION

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on March 29, 2006.

A timely Notice of Appeal was filed on April 18, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1 and 10 stand rejected. Claims 2-9 are canceled.

Claims 1 and 10 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed.

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SUMMARY OF CLAIMED SUBJECT MATTER

The invention provides an absorbent article (see e.g. sanitary napkin 20, page 10 lines 26-30, Figs. 1-6 and 9) comprising a pair of longitudinal side edges 26 (see e.g. page 16, lines 12-16, Figs. 1, 2, and 5), a liquid pervious topsheet 38 (see e.g. page 11, line 32-page 12, line 3, Figs. 1-3, 5, and 6), a liquid impervious backsheet 40 (see e.g. page 11, line 32-page 12, line 3, Figs. 2, 3, and 9) joined to the topsheet (see e.g. page 8, lines 7-8), and an absorbent core 42 positioned between the topsheet and the backsheet (see e.g. page 11, line 32-page 12, line 3, Figs. 2, 3, and 9). The absorbent article comprises an oil-based skin care composition provided on at least a portion of the topsheet (see e.g. 150, page 19, lines 1-2, Fig. 9), a flap 24 (see e.g. page 10, lines 28-30, Figs. 1, 4, and 5) extending laterally outwardly from each longitudinal side edge 26 (see e.g. Figs. 1, 4, and 5), the flap 24 comprising a garment surface 20B (see e.g. page 18, lines 7-9, Figs. 2 and 3), the garment surface of the flap comprising a flap adhesive 84 (see e.g. page 19, lines 3-8, page 20, lines 17-28, Figs. 1, 3, 5, 6, and 9), and a flap adhesive cover 104 (see e.g. page 19, lines 17-28, Figs. 5, 6, and 9) covering the flap adhesive 84. The flap adhesive cover 104 comprises a barrier sheet to reduce the migration of the skin care composition there through (see e.g. page 9, lines 5-9). The barrier sheet comprises two surfaces, wherein one surface of the barrier sheet is treated with a composition comprising a component selected from the group consisting of fluorochemicals, hydrophilic polymers, inorganic particles, and mixtures thereof (see e.g. page 61, lines 10-12).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 and 10 stand rejected under 35 U.S.C. § 103(a) over Mizutani (U.S. Pat. No. 5,683,377) in view of Hanser (WO 98/42286).

ARGUMENTS

Claims 1 and 10 stand rejected under 35 U.S.C. § 103(a) over Mizutani (U.S. Pat. No. 5,683,377) in view of Hanser (WO 98/42286). The Applicants respectfully traverse the rejections because the Final Office Action of March 29, 2006 fails to make out a *prima facie* case of obviousness (see Manual of Patent Examining Procedure (MPEP) § 2142 (8th Ed. Including May 2004 revisions)). The Final Office Action fails to make out a *prima facie* case of obviousness because there is no suggestion or motivation to combine the references cited

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to make the claimed combination and the references, when combined, fail to teach or suggest all the claim limitations of Claim 1 of the present application.

There is No Suggestion or Motivation to Combine the References

An embodiment of the present application is related to solving the problem of preserving the adhesive properties of an adhesive located on the garment facing surface of the wings of an absorbent article from being degraded by a skin care composition applied to the topsheet (see e.g. page 3, lines 15-19). One skilled in the art would not seek to combine Mizutani and Hanser to solve the problem of preserving the adhesive properties of an adhesive located on the garment facing surface of the wings of an absorbent article because each reference is directed to solving problems that are unrelated to one another. There is no suggestion or motivation in the references or to one skilled in the art to combine the references. The Final Office Action has impermissibly used hindsight reconstruction to combine the references and has failed to identify any suggestion or motivation to combine the references.

Mizutani discloses a release sheet on the adhesive of the backsheet and on the adhesive of the garment facing surface of the wings to solve the problem of the release sheet being "difficult to peel off . . . as a whole at once." Mizutani, Col. 1, Lines 38-39. The Office Action fails to cite and the Applicants are unaware of any disclosure in Mizutani et al. suggesting or motivating that a skin care composition, like those disclosed in Hanser, be applied to the topsheet of the absorbent article of Mizutani.

The object of the Hanser reference is "to provide a protective, releasable cover on the topsheet upper surface of an absorbent article." Hanser, Page 2, Lines 1-2 (emphasis added). Hanser, Page 19, Lines 34-35 states, "[t]he protective covers herein are therefore designed to cover . . . the upper surfaces of the various topsheets disclosed herein." The Office Action fails to cite and the Applicants are unaware of any disclosure in Hanser suggesting or motivating a release sheet, like that from Mizutani, be applied to the backsheet of the absorbent article of Hanser or to the adhesive on the garment facing surface of the wings.

There is no suggestion or motivation in the references cited or to one skilled in the art to combine the references because the references are directed towards solving two distinctly different problems using two distinctly different solutions that are unrelated to one another. Mizutani is directed towards an easy to remove release sheet for the backsheet. Hanser is

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directed towards protecting the topsheet and the lotion thereon from outside contaminants. Neither of the references cited are directed to solving the problem of protecting the adhesive properties of an adhesive located on the garment facing surface of the wings of an absorbent article from being degraded by a skin care composition applied to the topsheet, to which Claim 1 of the present application is directed.

A person skilled in the art looking at a reference related to the cover for the backsheet (Mizutani) would not be motivated to consider a reference related to a lotioned topsheet and a cover to prevent contamination of the topsheet (Hanser). Similarly, a person skilled in the art looking at a reference related to a lotioned topsheet and a cover to prevent contamination of the topsheet (Hanser) would not be motivated to consider a reference related to a cover for a backsheet (Mizutani).

Page 4 of the Final Office Action appears to identify the suggestion or motivation to combine the reference by stating, "[o]ne of ordinary skill in the art would have been motivated to modify the article of Mizutani by providing the topsheet with an oil-based composition and further comprising a barrier sheet treated with silicone and polyvinyl alcohol" because "doing so would reduce the adherence of body exudates to the skin of the wearer and also provide releasable protection for the lotioned topsheet." The Final Office Action fails to identify and the Applicants are unable to identify any portion of Mizutani motivating, teaching, or suggesting to one skilled in the art to modify the topsheet in Mizutani in any way to achieve reduced adherence of body exudates to the skin. Furthermore, the Office Action's statement that motivation can be found because "doing so would . . . provide releasable protection for the lotioned topsheet" is irrelevant to Claim 1 of the present application. Claim 1 of the present application is not directed towards providing releasable protection for the lotioned topsheet. Claim 1 of the present application solves the problem of preserving the adhesive properties of an adhesive located on the garment facing surface of the wings of an absorbent article from being degraded by the skin care composition applied to the topsheet of the absorbent article.

For the reasons set forth above, the Applicants submit that the Final Office Action has failed to identify any suggestion or motivation to combine Mizutani with Hanser. Rather, the Final Office Action has used impermissible hindsight reconstruction to combine two unrelated references. Therefore, the Applicants submit that Claim 1 of the present application is patentable

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over Mizutani in view of Hanser, under 35 U.S.C. § 103(a), and the Applicants respectfully request that Claim 1 be allowed on appeal.

Because Claim 10 depends upon Claim 1, Claim 10 is also allowable over Mizutani in view of Hanser and the Applicants respectfully request that Claim 10 be allowed on appeal.

The References, When Combined, Fail to Teach or Suggest all the Claim Limitations

Mizutani and Hanser, when combined, fail to teach or suggest all the claim limitations of Claim 1 of the present application. Mizutani and Hanser, when combined, fail to teach or suggest a flap adhesive cover comprising a treated barrier sheet.

Mizutani teaches a sanitary napkin comprising flaps (7), a flap adhesive (9), and a flap adhesive cover (12) covering the flaps (7). Mizutani does not teach or suggest a flap adhesive cover comprising a treated barrier sheet, as claimed in the present application.

Hanser teaches a sanitary napkin comprising a lotioned topsheet (24), flaps (52), attachment means (54), and a protective cover (25). Hanser also teaches that the protective cover (25) can be treated with silicone and polyvinyl alcohol (page 18, lines 26-page 20, line 16). Hanser does not teach or suggest a flap adhesive cover comprising a treated barrier sheet, as claimed in the present application.

The treated protective cover (25), in Hanser, does not cover the flap adhesive, as claimed in Claim 1 of the present application. Rather, the protective cover (25) in Hanser covers the topsheet side of the flaps (52) and the topsheet (24) of the absorbent article. The protective cover (25) does not cover the attachment means (54) (the attachment means in the present application is the flap adhesive 84). Page 4, lines 5-6 of Hanser teaches that the protective cover (25) is releasably attached to both the flaps (52) and to the topsheet upper surface. As shown in Fig. 3 of Hanser, which is a top view of a sanitary napkin, the protective cover (25) covers the topsheet (24) of the sanitary napkin and the topsheet side of the flaps (52), when the flaps (52) are in an unfolded position. The protective cover (25) does not cover the attachment means (54), which are located on the backsheet side of the flaps (52). The attachment means (54) are for attaching the flaps (52) to the wearer's panty when the flaps (52) are folded about the panty lines along the wearer's crotch. Hanser, Page 17, Lines 2-5. The attachment means (54) are hidden from view in Fig. 3 of Hanser and are illustrated with dashed lines. The attachment means (54) are on the backsheet side of the flaps (52) in the unfolded position, not the topsheet side of the flaps (52).

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The attachment means (54) commonly used in the art is an adhesive. If the attachment means (54) were located on the topsheet side of the flaps (52), when the user folds the flaps (52) about her crotch panty lines, the attachment means would be oriented away from the wearer's panty and would be unable to attach to the wearer's undergarment. Therefore, Hanser does not teach or suggest a flap adhesive cover comprising a treated barrier sheet, as claimed in the present application.

Neither Mizutani or Hanser teach or suggest a flap adhesive cover comprising a treated barrier sheet, as claimed in the present application. Therefore, the Applicants submit that Claim 1 of the present application is patentable over Mizutani in view of Hanser, under 35 U.S.C. § 103(a), and the Applicants respectfully request that Claim 1 be allowed on appeal.

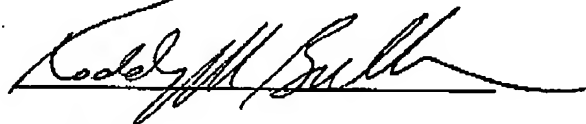
Because Claim 10 depends upon Claim 1, Claim 10 is also allowable over Mizutani in view of Hanser and the Applicants respectfully request that Claim 10 be allowed on appeal.

SUMMARY

In view of all of the above, it is respectfully submitted that Claims 1 and 10 are allowable over Mizutani and Hanser. The Applicants respectfully request that Claims 1 and 10 be allowed on appeal.

Respectfully submitted,

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Date: June 19, 2006

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CLAIMS APPENDIX

1. (rejected) An absorbent article comprising a pair of longitudinal side edges, a liquid pervious topsheet, a liquid impervious backsheet joined to said topsheet, and an absorbent core positioned between said topsheet and said backsheet, said absorbent article comprising:

an oil-based skin care composition provided on at least a portion of said topsheet,

a flap extending laterally outwardly from each longitudinal side edge, said flap comprising a garment surface, said garment surface of said flap comprising a flap adhesive, and

a flap adhesive cover covering said flap adhesive, said flap adhesive cover comprising a barrier sheet to reduce the migration of the skin care composition therethrough, the barrier sheet comprising two surfaces, wherein one surface of the barrier sheet is treated with a composition comprising a component selected from the group consisting of fluorochemicals, hydrophilic polymers, inorganic particles, and mixtures thereof.
- 2-9. (canceled)
10. (rejected) The absorbent article of Claim 1 wherein at least one surface of the barrier sheet is treated so as to be releasable.

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EVIDENCE APPENDIX

No matter is appended in this appendix.

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RELATED PROCEEDINGS APPENDIX

No matter is appended in this appendix.